

REMARKS:

I. Introduction

In the Office Action mailed on March 30, 2007, the Examiner rejected claims 1 to 20. The present amendment cancels no claims, amends claims 1, 2, 4, 12 to 15 and 20, and adds new claims 21 to 26. Accordingly, claims 1 to 26 are now pending in this application.

II. Claim Rejections Based on 35 U.S.C. § 112

The Examiner rejected claims 1, 12 and 20 under 35. U.S.C. § 112, second paragraph, as being indefinite. The claims have been amended to clarify the language identified by the examiner. Reconsideration and withdrawal of the rejection is requested.

III. Claim Objections

The Examiner objected to claim 5 because the limitation “the outer core” lacks antecedent basis. Claim 5 has been amended to add antecedent basis. Reconsideration and withdrawal of the objection is requested.

IV. Claim Rejections Based on 35 U.S.C. § 102(b)

(a) The Examiner rejected claims 1, 2, 4 to 6, 8, 9, 11 to 13, 15 to 17, 19 and 20 under 35. U.S.C. § 102(b) as anticipated by Dretler (US 4,927,426).

Dretler discloses a catheter (10) having an inwardly collapsible cuff (12). A snare means (22) passes through the catheter (10) having a capturing head or basket (26) at its distal end. Once a stone is captured within the capturing head (26), the capturing head (26) is pulled toward the cuff (12) so that the cuff (12) collapses inwardly into itself to form a double layer sheath portion (36) that covers the capturing head (26). The stone is fragmented by a laser or other fragmenting device inserted through a tube (24) of the snare means (22). Dretler discloses means for covering the capturing head (26) but no means for collapsing the capturing head.

In contrast, the present invention provides an outer sheath that forms a collapsible basket for capturing the stones and an inner core that both collapses the basket and fragments the stones. The basket is collapsed to form a small profile for easier insertion and removal. The inner core is preferably adapted to fragment stones both outside and within the basket. The

outer sheath that forms the collapsible basket is the outermost component of the instrument so that the invention can be inserted in very small passages. Thus, the instrument of the present device provides a device that can be used in very small passages (the outer sheath forming the collapsible basket is the outermost component) and can handle the entire capture and removal process without the exchange of components or the insertion of additional components (the inner core both changes the basket and fragments the stones).

Independent claims 1 and 20, and claims dependent therefrom, are allowable because they each include the limitations of "wherein the outer sheath has a basket sized for entrapping the stones and located near the distal end of the outer sheath", "wherein a periphery of the basket has a plurality of spaced apart openings sized and shaped for passage of the stones into the interior space when in the expanded condition", and "wherein the outer sheath is the radially outermost component of the instrument." Dretler nor any prior art of record reasonably discloses or suggests the present invention as now claimed by independent claims 1 and 20. Reconsideration and withdrawal of the rejection is requested.

Independent claims 12 and 20, and claims dependent therefrom, are allowable because they each include the limitations of "wherein the outer sheath has a basket sized for entrapping the stones and located near the distal end of the outer sheath", "wherein a periphery of the basket has a plurality of spaced apart openings sized and shaped for passage of the stones into the interior space when in the expanded condition", "wherein longitudinal movement of the inner core relative to the outer sheath transforms the basket from the expanded condition to the collapsed condition" and "wherein the distal end of the inner core is longitudinally moveable from a retracted position within the basket to an extended position past the distal end of the outer sheath to fragment stones outside the basket." Dretler nor any prior art of record reasonably discloses or suggests the present invention as now claimed by independent claims 12 and 20. Reconsideration and withdrawal of the rejection is requested.

(b) The Examiner rejected claims 1 to 6, 8, 10, 12 to 14, 16, 17, 19, and 20 under 35. U.S.C. § 102(b) as anticipated by Clement (US 5,197,968).

Clement discloses a tissue retrieval assembly having a shield tube (40) and a support tube (14) extending with the shield tube (40) and having a collapsible basket (50) formed at a distal end thereof. The basket (50) collapses when it is retracted into the shield tube (40) and

opens when out of the shield tube (40). A hollow cutting cannula (30) extends through the support tube (14) and has a sharp cutting edge (31) that acts with an anvil (64) located at the distal end of the basket (50) to cut plugs of soft tissue within the hollow cannula (30). Clement discloses an alternative embodiment where the cannula (30) cooperates with a cavity (60) to cut the tissue plug within the hollow cannula (30).

As discussed hereinabove, the present invention is very different from the device of Clements. In one sense, the present invention is the inverse of Clements in that the outermost sheath forms the basket and the inner core shapes the basket. Additionally, the present invention reduces components and complexity by having an inner core that both shapes the basket and fragments stones.

Independent claims 1 and 20, and claims dependent therefrom, are allowable because they each include the limitations of "wherein the outer sheath has a basket sized for entrapping the stones and located near the distal end of the outer sheath", "wherein a periphery of the basket has a plurality of spaced apart openings sized and shaped for passage of the stones into the interior space when in the expanded condition", and "wherein the outer sheath is the radially outermost component of the instrument." Clements nor any prior art of record reasonably discloses or suggests the present invention as now claimed by independent claims 1 and 20. Reconsideration and withdrawal of the rejection is requested.

Independent claims 12 and 20, and claims dependent therefrom, are allowable because they each include the limitations of "wherein the outer sheath has a basket sized for entrapping the stones and located near the distal end of the outer sheath", "wherein a periphery of the basket has a plurality of spaced apart openings sized and shaped for passage of the stones into the interior space when in the expanded condition", "wherein longitudinal movement of the inner core relative to the outer sheath transforms the basket from the expanded condition to the collapsed condition" and "wherein the distal end of the inner core is longitudinally moveable from a retracted position within the basket to an extended position past the distal end of the outer sheath to fragment stones outside the basket." Clements nor any prior art of record reasonably discloses or suggests the present invention as now claimed by independent claims 12 and 20. Reconsideration and withdrawal of the rejection is requested.

(c) The Examiner rejected claims 1, 5 to 8, 11, 12 and 16 to 19 under 35. U.S.C. § 102(b) as anticipated by Bates (US 6,099,534).

Bates discloses a retrieval device having a sheath (18) and a cable (20) having a collapsible basket (10) at a distal end of the cable (20). The basket (10) collapses when it is pulled into the sheath (18) and opens when pushed out of the sheath (18) (FIGS. 1 to 3) or has cables (21) that pull open the basket (10) when it is outside the sheath (18) (FIGS. 4A and 4B) or has cables (21) that push closed the basket (10) (FIGS. 4C and 4D). A ram rod (29) also passes through the sheath to fragment stones.

As discussed hereinabove, the present invention is very different from the device of Bates. In one sense, the present invention is the inverse of Bates in that the outermost sheath forms the basket and the inner core shapes the basket. Additionally, the present invention reduces components and complexity by having an inner core that both shapes the basket and fragments stones.

Independent claims 1 and 20, and claims dependent therefrom, are allowable because they each include the limitations of "wherein the outer sheath has a basket sized for entrapping the stones and located near the distal end of the outer sheath", "wherein a periphery of the basket has a plurality of spaced apart openings sized and shaped for passage of the stones into the interior space when in the expanded condition", and "wherein the outer sheath is the radially outermost component of the instrument." Bates nor any prior art of record reasonably discloses or suggests the present invention as now claimed by independent claims 1 and 20. Reconsideration and withdrawal of the rejection is requested.

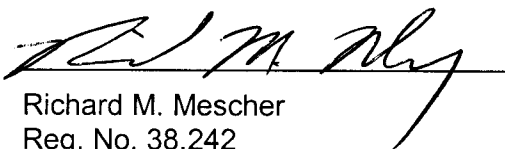
Independent claims 12 and 20, and claims dependent therefrom, are allowable because they each include the limitations of "wherein the outer sheath has a basket sized for entrapping the stones and located near the distal end of the outer sheath", "wherein a periphery of the basket has a plurality of spaced apart openings sized and shaped for passage of the stones into the interior space when in the expanded condition", "wherein longitudinal movement of the inner core relative to the outer sheath transforms the basket from the expanded condition to the collapsed condition" and "wherein the distal end of the inner core is longitudinally moveable from a retracted position within the basket to an extended position past the distal end of the outer sheath to fragment stones outside the basket." Bates nor any prior art of record

reasonably discloses or suggests the present invention as now claimed by independent claims 12 and 20. Reconsideration and withdrawal of the rejection is requested.

V. CONCLUSION

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is found that that the present amendment does not place the application in a condition for allowance, Applicant's undersigned attorney requests that the Examiner initiate a telephone interview to expedite prosecution of the application. If there are any fees resulting from this communication, please charge same to our Deposit Account No. 50-3915.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. M. Mescher", is written over a horizontal line.

Richard M. Mescher
Reg. No. 38,242

PORTER, WRIGHT, MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215
(614) 227-2026
Fax: (614) 227-2100

May 14, 2007